

Waiver 2000-1

MONTGOMERY COUNTY ETHICS COMMISSION

OPINION & WAIVER

The Director of the Department of Health and Human Services October 9, 2000, has requested an opinion and waiver, if necessary, to permit his son to participate in the County's Youth Conservation Corps Program, which is administered by the Department of Health and Human Services.

Applicable Facts

According to the Director:

The Conservation Corps program is a training and work experience opportunity for any Montgomery County youth between the ages of 17–23 years old who is in need of training, education, and job skills. Special emphasis is placed on providing opportunities for at-risk youth.

Corps members are classified as Conservation Corps Trainees. They are temporary, non-merit employees and are paid minimum wages (Grade S-I) with no benefits. On a quarterly basis, each trainee is evaluated on a number of work and job related criteria and awarded raises that range from five cents to a quarter per hour depending on their evaluation scores. The evaluations are conducted and scored by the Conservation Corps supervisors. [The Director] exercise[s] no influence over those evaluations and there are two other levels of supervision between the Corps supervisors and [the Director]

Appointments of Conservation Corps trainees to the program are done on a non-competitive basis and are contingent solely on the trainee's interest and commitment to the active participation in the training and education services available in the program. No one is denied the opportunity to join the Conservation Corps if they indicate and interest and willingness to participate.

Since 1991, all appointments to the Conservation Corps program have been delegated to and made by [a member of the Director's] staff. [The Director] has exercised no authority and [made no decision] concerning those appointments at any time. That arrangement and practice will continue in the future.

[The Director's son] has expressed an interest and willingness to participate in the Conservation Corps program [, and meets all of the program's eligibility requirements].

Applicable Law

The Ethics Law prohibits: (1) a public employee from intentionally using the prestige of his or her office for private gain or the gain of another, and (2) a public employee from

appointing, hiring, or advocating the advancement of a relative to a position that is under the jurisdiction or control of the public employee; and (3) the employment of a relative of a public employee from being employed in a position if the public employee would exercise jurisdiction or control over the position and advocates the relative's employment. The Commission, however, is authorized to waive any prohibition of the Ethics Law.

Conclusion & Waiver

Although the Conservation Corps Program is under the ultimate jurisdiction of the Director and Conservation Corps Trainees are temporary, non-merit employees, the Commission, based on the Director's representations and the fact that the "employment" is more in the nature of participation in a service program that is open to all who meet its eligibility criteria, concludes that the Director would not exercise jurisdiction or control over his son's participation in the program and the participation of the Director's son in this particular program would not constitute the use of the prestige of the Director's office for the benefit of his son. Moreover, even if the son's participation technically would violate any of the three prohibitions described above, the Commission finds that it is in the County's best interest to waive those prohibitions in this instance, and hereby grants such waivers.

[signed]

Walter A. Scheiber, Chairman

November 14, 2000